

Writer's Direct Line: 202-772-5312
edozier@sheppardmullin.com

May 8, 2007

VIA ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: WT Docket No. 07-16: M2Z Networks, Inc., Application for License and Authority to Provide National Broadband Radio Service in the 2155-2175 MHz Band;
WT Docket No. 07-30: Petition of M2Z Networks, Inc. for Forbearance Under 47 U.S.C. § 160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission's Rules and Other Regulatory and Statutory Provisions
FOIA Control No. 2007-258**

Dear Ms. Dortch:

On behalf of M2Z Networks, Inc. ("M2Z") and in response to a letter dated May 3, 2007 from Joel D. Taubenblatt, Chief, Broadband Division,¹ attached for filing in the above-referenced proceedings is a copy of a transmittal letter and request for confidential treatment filed on March 26, 2007 (the "Confidential Treatment Request").

As set forth in the attached documents, the material that is the subject of the Confidential Treatment request contains commercial and financial information that is both privileged and confidential, and is therefore appropriately withheld from public inspection pursuant to Section 0.457(d) of the Commission's rules.² In the alternative, M2Z has requested confidential

¹ Letter to W. Kenneth Ferree, Erin L. Dozier, and Christopher G. Tygh, Sheppard, Mullin, Richter & Hampton LLP from Joel D. Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau (May 3, 2007).

² See 47 C.F.R. § 0.457(d).

treatment pursuant to Section 0.459 of the Commission's rules.³ M2Z also requested that the material be returned if the Confidential Treatment Request is denied.

Because the material meets the standards for confidential treatment set forth in the Commission's rules, the Confidential Treatment Request should be granted. To the extent that it seeks public review and inspection of the subject material, the Freedom of Information Act request filed by NetfreeUS, LLC⁴ should be denied.

If you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Sincerely,

/s/

Erin L. Dozier, Esq.
Counsel for M2Z Networks, Inc.

Attachments

cc: Fred Campbell
Cathy Massey
Joel Taubenblatt
Peter Daronco
Jennifer Tomchin

³ See 47 C.F.R. § 0.459.

⁴ See Freedom of Information Act Request of NetfreeUS, LLC in WT Docket No. 07-16 (filed Apr. 10, 2007).

CERTIFICATE OF SERVICE

I, Erin L. Dozier, an attorney in the law office of Sheppard Mullin Richter & Hampton, LLP, hereby certify that I have on this 7th day of May 2007 caused a copy of the foregoing letter response to the Freedom of Information Act Request of NetfreeUS, LLC to be delivered by first-class mail to the following:

Shant S. Hovnanian
Speedus Corp., Managing Member of
NetfreeUS, LLC
9 Desbrosses Street, Suite 402
New York, NY 10013

Stephen E. Coran
Rudolfo L. Baca
Jonathan E. Allen
Rini Coran, PC
1615 L Street, NW, Suite 1325
Washington, DC 20036
Counsel to NetfreeUS, LLC

_____/s/_____
Erin L. Dozier

**PLEASE STAMP
AND RETURN**

**CONFIDENTIAL DOCUMENT ENCLOSED—
NOT FOR PUBLIC INSPECTION**



1300 I Street, NW | 11th Floor East | Washington, D.C. 20005-3314
202-218-0000 office | 202-218-0020 fax | www.sheppardmullin.com

Writer's Direct Line: 202-218-0008
kferree@sheppardmullin.com

March 26, 2007

BY HAND

Ms. Marlene Dortch
Secretary
Federal Communications Commission
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

FILED/ACCEPTED
MAR 26 2007
Federal Communications Commission
Office of the Secretary

**Re: CONFIDENTIAL DOCUMENT ENCLOSED—NOT FOR PUBLIC
INSPECTION**

***M2Z Networks, Inc., Application for License and Authority to
Provide National Broadband Radio Service
In the 2155-2175 MHz Band, WT Docket No. 07-16***

***M2Z Networks, Inc., Petition for Forbearance Under
47 U.S.C. § 160(c) Concerning Application of Sections 1.945(b)
And (c) of the Commission's Rules and Other Regulatory and
Statutory Provisions, WT Docket No. 07-30***

Dear Ms. Dortch:

Enclosed on behalf of M2Z Networks, Inc. ("M2Z") is an original and two (2) copies of a Request for Confidential Treatment and a confidential letter being submitted in the above-referenced proceedings. ***The enclosed letter should not be placed in the public record of these proceedings.*** This is because the letter contains information that qualifies for confidential treatment under the Commission's rules. Therefore, pursuant to Sections 0.457 and 0.459 of the Commission's rules,¹ M2Z has clearly marked the pages of the enclosed letter "**CONFIDENTIAL - NOT FOR PUBLIC INSPECTION.**" The Request for Confidential Treatment includes a detailed showing of why the enclosed letter should be afforded confidential treatment and not be placed in the Commission's public records.

¹ See 47 C.F.R. §§ 0.457 & 0.459.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

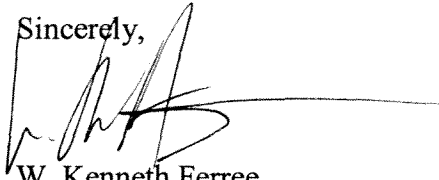
Ms. Marlene Dortch

March 26, 2007

Page 2

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Kenneth Ferree', with a long horizontal line extending to the right.

W. Kenneth Ferree

Erin L. Dozier

Christopher G. Tygh

SHEPPARD MULLIN RICHTER & HAMPTON LLP

1300 I Street, NW

11th Floor East

Washington, DC 20005

(202) 218-0000

Counsel for M2Z Networks, Inc.

Enclosures

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
M2Z NETWORKS, INC.)	
)	
Application for License and Authority to)	WT Docket No. 07-16
Provide National Broadband Radio Service In)	
the 2155-2175 MHz Band)	
)	
Petition for Forbearance Under)	WT Docket No. 07-30
47 U.S.C. § 160(c) Concerning Application of)	
Sections 1.945(b) and (c))	
of the Commission's Rules and Other)	
Regulatory and Statutory Provisions)	
)	

To: Chief, Wireless Telecommunications Bureau

REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to Sections 0.457 and 0.459 of the rules of the Federal Communications Commission ("FCC" or "Commission"),¹ M2Z Networks, Inc. ("M2Z") respectfully requests that the attached letter ("Letter"), filed in the above-captioned matters, be afforded confidential treatment and not be placed in the Commission's public files.

M2Z is an applicant for a license to construct and operate a nationwide broadband wireless network.² The attached Letter contains confidential and privileged information relating

¹ See 47 C.F.R. §§ 0.457, 0.459.

² See Application of M2Z Networks, Inc. for License and Authority to Provide a National Broadband Radio Service ("NBR") in the 2155-2175 MHz Band (filed May 5, 2006) (the "Application"). The M2Z Application was amended on September 6, 2006, to incorporate by reference M2Z's subsequently filed petition for forbearance. See Petition of M2Z Networks, Inc. for Forbearance Under 47 U.S.C. § 160(c) Concerning Application of Sections 1.945(b) and (c) of the Commission's Rules and Other Regulatory and Statutory Provisions, WT Docket No. 07-30 (filed Sept. 1, 2006) ("Forbearance Petition").

to M2Z's financial qualifications that is relevant to the FCC's review of the above-captioned matters. The Letter contains highly sensitive material that qualifies as "commercial or financial information" that is "privileged and confidential."³ Even if the materials were not confidential and privileged, public disclosure of such sensitive material would adversely affect M2Z's ability to negotiate with potential sources of additional funds to construct and operate the free, nationwide NBRS network proposed in its Application. Such disclosure would place M2Z at a competitive disadvantage by alerting other providers of communications services of the identity of a potential funding source and terms upon which M2Z is negotiating additional funds. M2Z also would be placed at a significant disadvantage in negotiating the terms of investments with other funding sources if the terms of any one of its negotiations were revealed to other sources of funding involved in current or future negotiations with M2Z. In these circumstances, this information qualifies as automatically exempt from public examination under Sections 0.457(d) of the Commission's rules.⁴

In the alternative, M2Z requests confidential treatment of this information pursuant to Section 0.459(b) of the Commission's rules.⁵ In support of this request, and pursuant to M2Z hereby states as follows:

1. The information for which confidential treatment is sought is included in M2Z's Letter, including information on the conditions under which a funding source anticipates that it would be able to raise equity and/or debt to be invested in M2Z.
2. The information is being submitted in the above-captioned proceeding in connection with M2Z's Application to provide NBRS service. The Letter

³ See 47 C.F.R. § 0.457(d)(citing 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905).

⁴ See 47 C.F.R. §§ 0.457(d) & 0.457(d)(1)(i) (citing 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905).

⁵ See 47 C.F.R. § 0.459(b).

supplements information provided in the Application and other filings by M2Z in this proceeding which demonstrate M2Z's financial fitness to be a Commission licensee and its financial ability to construct and deploy the NBRS network within a specified timeframe.

3. This information was provided under cover of confidentiality. It is extremely sensitive, as it sets forth the identity of a potential source of funds as well as certain terms and conditions under which funds would likely be made available. The disclosure of this information would significantly prejudice M2Z for two reasons. First, M2Z may engage in separate negotiations with a number of sources of funds, and revealing the detailed terms of one negotiation to potential funding sources involved in current and future negotiations with M2Z would place M2Z at a significant disadvantage. Second, disclosure of this information would unfairly alert other communications providers of a potential source of funds and some of the terms and conditions under negotiation, prejudicing M2Z's ability to compete.
4. The information for which non-disclosure is sought pertains to a proposed service that is not yet available. The service would provide a new competitor in the market for broadband Internet access, which is presently dominated by digital subscriber line (DSL) and cable modem services.
5. Disclosure of the information for which non-disclosure is sought could result in substantial competitive harm to M2Z by skewing ongoing negotiations between M2Z and a number of potential sources of funding regarding the terms of such funding.⁶ Such information could also be used by current or prospective providers of communications services that also are seeking funds for their own network construction or upgrades.⁷ Thus, this information could prejudice M2Z's dealings with current and potential funding sources, placing it at a disadvantage vis-à-vis competitors.
6. M2Z has taken steps to ensure that this information is not disclosed to the public. The instant request constitutes a further effort to ensure that the material remains confidential.

⁶ See *Application of Mobile Communications Holdings, Inc. for Authority to Construct the ELLIPSO Elliptical Orbit Mobile Satellite System*, 10 FCC Rcd. 1547, 1548 (IB 1994) ("buyers receive a clear competitive advantage if they know the prices that other buyers have been charged as a result of individual negotiations").

⁷ See *TKR Cable Company of Ramapo*, 11 FCC Rcd. 3538, 3539 (1996) ("the pivotal question in this case is whether disclosure of the information . . . is likely to cause substantial harm to TKR's competitive position").

7. The attached material for which non-disclosure is sought is not available to the public and has not previously been disclosed to third parties outside the negotiation setting other than attorneys, consultants, or others with whom M2Z has a privileged or confidential commercial relationship.
8. M2Z requests that the attached material be withheld from disclosure for an indefinite period. Disclosure of this information at any time could jeopardize the competitive position of M2Z.
9. Lastly, M2Z notes that denying its request that this information be kept confidential would impair the Commission's ability to obtain this type of voluntarily disclosed information in the future. The ability of a government agency to continually obtain confidential information was behind the legislative purpose in developing exemptions from FOIA.⁸ The U.S. Court of Appeals for the D.C. Circuit has recognized a "private interest in preserving the confidentiality of information that is provided the Government on a voluntary basis."⁹ The Commission should extend a similar recognition to the enclosed materials.

⁸ See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) ("Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government's] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.").

⁹ *Id.* at 879.

M2Z requests that the Commission return these materials if its request for confidentiality is denied.¹⁰

Respectfully submitted,

M2Z NETWORKS, INC.

By: 

Milo Medin
Chairman
M2Z Networks, Inc.
2800 Sand Hill Road
Suite 150
Menlo Park, CA 94025

W. Kenneth Ferree
Erin Dozier
Christopher Tygh
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W.
11th Floor East
Washington, DC 20005
(202) 218-0000

Its Attorneys

Uzoma C. Onyeije
Vice President for Regulatory Affairs
M2Z Networks, Inc.
2000 North 14th Street
Suite 600
Arlington, VA 22201
(703) 894-5000

March 26, 2007

¹⁰ See 47 C.F.R. § 0.459(e).